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From: George M. Macdonald
Date: November 23, 2005
Subject: Serial No.: 10/065,286
Pages: 20 (including this cover)

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Re: U.S. Patent Application Serial No.: 10/065,286

Confirmation No.: 5702

Our Docket # F-380

Enclosed please find Appellant's Brief on Appeal in furtherance of the May 12, 2005 Notice of Appeal and in response to the October 25, 2005 Notice of Defective Appeal Brief.

CERTIFICATION OF FACSIMILE TRANSMISSION

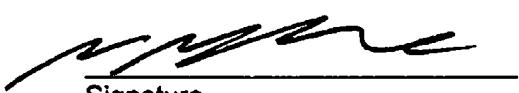
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1. Appellant's Corrected Brief on Appeal (19 pages).

on November 23, 2005

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Name of Registered Rep.

Reg. No.: 39,284

November 23, 2005

Date

Serial No.: 10/065,286
 Attorney Docket No.: F-380

Patent

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
 BOARD OF PATENT APPEALS AND INTERFERENCES**

In re patent application of:) Attorney Docket No.: F-380
) Customer No.: 00919
 Christian A. Beck)
) Examiner: Rogers, David A.
 Serial No.: 10/065,286) Group Art Unit: 2856
 Filed: September 30, 2002)
 Confirmation # 5702) Date: July 12, 2005

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Title: **HAZARDOUS MATERIAL DETECTOR FOR DETECTING
 HAZARDOUS MATERIAL IN A MAILSTREAM**

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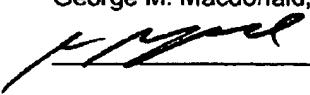
APPELLANT'S CORRECTED BRIEF ON APPEAL

Sir:

This is an appeal pursuant to 35 U.S.C. § 134 and 37 C.F.R. §§ 41.31 et seq. from the final rejection of claims 1-16 of the above-identified application mailed February 16, 2005. This Amended Brief on Appeal is submitted in response to the October 25, 2005 Notice of Defective appeal Brief. The Notice of Appeal was filed in this case on May 12, 2005. Accordingly, this brief is timely filed. No fee is believed due. The Commissioner is hereby authorized to charge any additional fees that may be required for this appeal or to make this brief timely or credit any overpayment to Deposit Account No. **16-1885**.

CERTIFICATE OF FACSIMILE TRANSMISSION

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 George M. Macdonald, Reg. No. 39,284 (Name of Registered Rep.)

 (Signature) November 23, 2005 (Date)

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

TABLE OF CONTENTS

- I Real Party in Interest
- II Related Appeals and Interferences
- III Status of Claims
- IV Status of Amendments
- V Summary of Claimed Subject Matter
- VI Grounds of Rejection to Be Reviewed on Appeal
- VII Argument
- VIII Claims Appendix
- IX Evidence Appendix – None
- X Related Proceedings Appendix – None

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

I. Real Party in Interest

The real party in interest in this appeal is Pitney Bowes Inc., a Delaware corporation, the assignee of this application.

II. Related Appeals and Interferences

There are no appeals or interferences known to Appellant, his legal representative, or the assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 1-16 are in the case and under final rejection of the Examiner.

Claims 1, 2, 6-10 and 16 stand rejected under 35 U.S.C. 103(a) as allegedly being rendered obvious by United States Patent No. 6,542,842 B1 to Robinson, Jr., ("Robinson '846") in view of United States Patent Application Publication 2004/0046009 A1 by Weisenberg, et al. ("Weisenberg '009"), United States Patent Application Publication 2003/0140015 A1 by Applebaum ("Applebaum '015"), and/or United States Patent Application Publication 2003/0085266 by Simon ("Simon '266") and in further view of United States Patent No. 5,179,281 to Tawil, et al. ("Tawil '281").

Claims 3-5 stand rejected under 35 U.S.C. 103(a) as allegedly being rendered obvious by United States Patent No. 6,542,842 B1 to Robinson, Jr., ("Robinson '846") in view of United States Patent Application Publication 2004/0046009 A1 by Weisenberg, et al. ("Weisenberg '009"), United States Patent Application Publication 2003/0140015 A1 by Applebaum ("Applebaum '015"), and/or United States Patent Application Publication 2003/0085266 by Simon ("Simon '266") and United States Patent No. 5,179,281 to Tawil, et al. ("Tawil '281") and in further view of United States Patent No. 4,840,919 to Attar ("Attar '919").

Claims 11-15 stand rejected under 35 U.S.C. 103(a) as allegedly being rendered obvious by United States Patent No. 6,542,842 B1 to Robinson, Jr., ("Robinson '846") in view of United States Patent Application Publication 2004/0046009 A1 by Weisenberg,

Serial No.: 10/065,286
 Attorney Docket No.: F-380

Patent

et al. ("Weisenberg '009"), United States Patent Application Publication 2003/0140015 A1 by Applebaum ("Applebaum '015"), and/or United States Patent Application Publication 2003/0085266 by Simon ("Simon '266") and United States Patent No. 5,179,281 to Tawil, et al. ("Tawil '281") and in further view of the legal precedent *In re Ngai*, 70 USPQ 2d 1862 ("Ngai").

Appellant hereby appeals the rejection of claims 1-16.

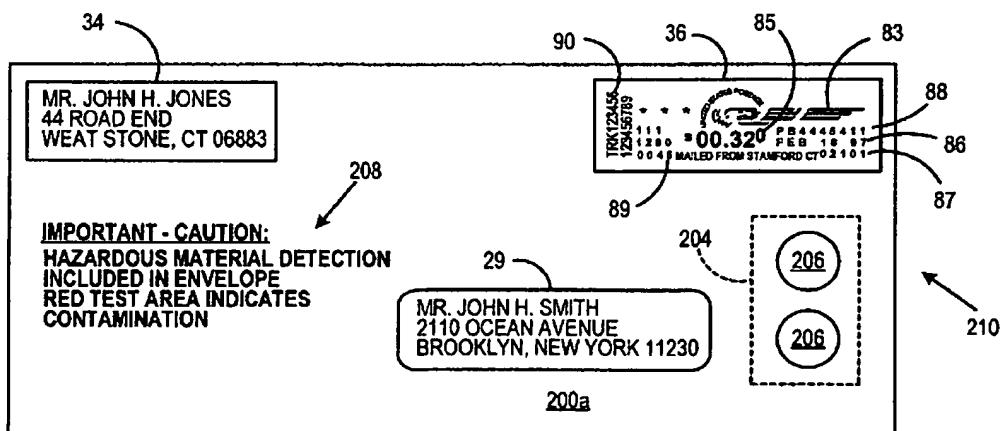
IV. Status of Amendments

There are no amendments to the claims filed subsequently to the final rejection of February 16, 2005. Therefore, the claims set forth in Appendix A to this brief are those as set forth before the final rejection.

V. Summary of Claimed Subject Matter

Appellants' invention relates to hazardous material detectors for detecting hazards in a mail stream. Figure 6 is reproduced below for use in a summary discussion of an illustrative embodiment. As can be appreciated from Figure 6, a hazardous material detection mailpiece 210 has a recipient address field 29 printed on the envelope front side 200a and a sender address field 8. A postal indicia 36 is affixed

FIG. 6



to mailpiece 30. Indicia 36 contains a dollar amount 85; the date 86 that postal indicia

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

36 was affixed to mailpiece 30; the place 87 that mailpiece 30 was mailed; the postal meter serial number 88; an eagle 83; a security code 89; and, a tracking number 7. Security code 89 and tracking number 90 are unique numbers that are derived from address field 29 and information contained in the postage meter that affixed indicia 36. The hazardous material detection mailpiece 210 includes a hazardous material test strip 204 which can be viewed through one or more holes 206 in the mailpiece. The holes 206 can be positioned adjacent to indicia 36 or any other suitable position including the back side of the mailpiece. The number of holes can be determined by one of ordinary skill in the art considering factors including the size of the test strip 204.

In an embodiment having a test strip insert, a printer is positioned to print on the insert, and in this example, to print a barcode or Identification (ID) number on the insert. The ID number would serve to preserve a record the time, date or other information pertaining to the insert so that the identification information could later be used in processing. For example, if the envelope 200 containing the insert 204 was destroyed, the ID number could be used to determine when the insert was prepared etc.

Additional features of the invention are discussed below in the Argument section of this Brief. This summary is not intended to supplant the description of the claimed subject matter as provided in the claims as recited in Appendix A, as understood in light of the entire specification.

VI. Grounds of Rejection to be Reviewed on Appeal

Whether claims 1-16 are patentable under 35 U.S.C. §103(a).

VII. Argument

As Appellant discusses in detail below, the final rejection of claims 1-16 is devoid of any factual or legal premise that supports the position of unpatentability. It is respectfully submitted that the rejection does not even meet the threshold burden of

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

presenting a *prima facie* case of unpatentability. For this reason alone, Appellant is entitled to grant of a patent. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

A. The Simon '266 and Tawil '281 References are Not Properly Combined Under 35 U.S.C. Section 103(a)

Initially, regarding the rejection of claims 1-16, the Examiner relies on the filing date of a related provisional patent application in the Simon '266 reference. After Appellant had to specifically request a copy of the underlying provisional application, Appellant noted to the Examiner that the provisional did not support all material in Simon '266. Furthermore, Appellant respectfully requested that the Examiner cite to support in the underlying provisional application. Importantly, the underlying provisional makes no mention of an Elisa assay pad 48 as shown in Simon '266 at paragraph 0036. Clearly, the Simon '266 is not available as prior art for such material.

As described more fully below, the three groups of obviousness rejections put forth by the Examiner in the Final Rejection rely on the combination of at least five (5) references and as many as six (6) references in addition to legal precedent.

Appellant argues that there is no motivation to combine the references. For the rejection to stand, there must be some teaching, suggestion or motivation to combine the references found in the references themselves or the general knowledge of one of skill in the art. *Citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). However, the Examiner used the invention itself as the roadmap to justify combining non-analogous references by stating that

Finally, Robinson, Jr. teaches that the bio-hazardous material indicator will comprise an electronic fingerprint (reference item 16) representing an electronic code that is machine readable. Robinson, Jr., however, does not expressly teach the use of an envelope with a plurality of holes or a bio hazardous material indicator including an identifier associated with time data. ... Tawil et al. teaches a hazardous material indicator (reference item 10) comprising a substrate (reference item 11) and an identifier (reference items 25 and 26). The identification numbers of the indicator is associated with date and time data (column 4, lines 25-50; column 12, lines 26-58). The date/time data is useful as it provides an indication of last "annealing" of the indicator.

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

Even absent the teachings of Tawil et al. one would be motivated to associate the bio-hazardous indicator with time data. As clearly taught by Robinson, Jr., the color change of the indicator is substantially irreversible and needs weeks in an amine-free environment to be reversed (column 2, lines 63-67). Clearly, one would like to know the amount of time that the indicator was in such an environment so that the indicator can be properly reconditioned for reuse.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Robinson, Jr. with the teachings of Weisenberg, Applebaum, Simon, and Tawil et al. to provide a hazardous material detector comprising an envelope with holes and a hazardous material indicator associated with time data. (February 16, 2005 Final Office Action, pp. 7, 8-9)

Appellant respectfully submits that there is no motivation to combine the cited references as suggested by the Examiner. There is no discussion of a need to wait to reuse a device in the other references and such conjecture is not applicable to the instant claims. Initially, the rejections are unclear as they do not clearly refer to the references cited and no support is provided for combining the Tawil '281 reference with scant support for an apparent alternative rejection. In that regard, Appellant has not been fairly apprised of the alternative rejection.

Furthermore, the Tawil '281 reference does not appreciate the problem of providing a test strip that changes color and is visible through a hole. In Tawil '281, the test strip is inserted in a remote reader to determine radiation dosage levels and is in no way related to the art of test strips providing a visible indication. As the Federal Circuit has held, “[I]t is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art ...” See *In re Fitch*, 972 F.2d 1260, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992)(quoting *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1998).

Additionally, the Tawil '281 reference describes devices, systems and methods for measuring radiation dosage received by a user wearing the device. Clearly, Tawil '281 is not even remotely related to envelope test strip devices and is not at all pertinent to the claimed invention. One of skill in the art would not look to Tawil '281 to modify Robinson '846. Accordingly, the references are not properly combined. See *Wang Lab., Inc. v. Toshiba Corp.*, 993 F. 2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993).

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

Accordingly, the references are not properly combined and the rejection should be reversed.

B. Claims 1, 2, 6-10 and 16 are not Unpatentable under 35 U.S.C. § 103(a)

Claims 1, 2, 6-10 and 16 stand rejected under 35 U.S.C. 103(a) as allegedly being rendered obvious by United States Patent No. 6,542,842 B1 to Robinson, Jr., ("Robinson '846") in view of United States Patent Application Publication 2004/0046009 A1 by Weisenberg, et al. ("Weisenberg '009"), United States Patent Application Publication 2003/0140015 A1 by Applebaum ("Applebaum '015"), and/or United States Patent Application Publication 2003/0085266 by Simon ("Simon '266") and in further view of United States Patent No. 5,179,281 to Tawil, et al. ("Tawil '281").

In rejecting a claim under 35 U.S.C. §103, the Examiner is charged with the initial burden for providing a factual basis to support the obviousness conclusion. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967); *In re Lunsford*, 375 F.2d 385, 148 USPQ 721 (CCPA 1966); *In re Freed*, 425 F.2d 785, 165 USPQ 570 (CCPA 1970). The Examiner is also required to explain how and why one having ordinary skill in the art would have been led to modify an applied reference and/or combine applied references to arrive at the claimed invention. *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995); *In re Deuel*, 51 F.3d 1552, 34 USPQ 1210 (Fed. Cir. 1995); *In re Fritch*, 972 F.2d 1260, 23 USPQ 1780 (Fed. Cir. 1992); *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). In establishing the requisite motivation, it has been consistently held that both the suggestion and reasonable expectation of success must stem from the prior art itself, as a whole. *In re Ochiai*, *supra*; *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Dow Chemical Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988).

Claim 1 is directed to a hazardous material detector including a test strip and is shown below:

1. A hazardous material detector comprising:
an envelope comprising a front side and a back side;

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

holes formed in at least one of the front side or the back side of the envelope;

a hazardous material test strip for detecting the presence of hazardous material in contact with the test strip;
wherein the test strip includes an identifier associated with time data; and

whereby when hazardous materials are detected by the hazardous material test strip a physical change occurs to the hazardous material test strip and the physical change can be viewed through at least one hole formed in the at least one of the front side or the back side of the envelope..
(emphasis added).

In the February 16, 2005 Final Office Action, the Examiner rejected claims 1, 2, 6-10 and 16 under 35 U.S.C. section 103(a). Appellant respectfully disagrees with the rejection and urge its reversal for at least the reasons stated below.

The Examiner cites to Simon '266 but as described above, Simon '266 is not available as prior art for all subject matter described.

As described above, Tawil '281 is not properly combined. The Examiner states that without the Tawil '281 reference that the invention as presently claimed would still be deemed obvious. However, the Examiner does show any teaching or suggestion in the art to support such a rejection. In the February 16, 2005 Final Office Action, the Examiner admits that Tawil '281 operates in a different manner and is directed to radiation exposure measurement and not contaminant detection. See Final Office Action, pages 2, 8.

Appellant respectfully submits that Tawil '281 is in non-analogous art. The other cited references do not appreciate the need to associate time with a test strip. There is no motivation to add such a limitation without impermissible hindsight and using the present claim as a roadmap. One of skill in the art would not look to a radiation detector to modify the contaminant detectors of the other cited references – nor would they need to. The other cited references appreciate only the problem of detecting contaminants such as Anthrax and describe such detectors. Such persons of skill in the art would not need to search for other detectors and would have no reason to search radiation detector art.

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

The Examiner notes that Robinson '846 discusses the time associated with the change in color, but Robinson '846 does not in any way teach or suggest a test strip that includes an identifier associated with time data. See Final Office Action, pages 8-9.

Appellant respectfully submits that Tawil '281 does not teach a test strip and certainly not one in which a physical change can be monitored thorough a hole. Accordingly, even if the references were to be found to be properly combined, the references do not teach or fairly suggest the invention as presently claimed and in particular do not teach or suggest a test strip for detecting the presence of hazardous material in contact with the test strip, a test strip having an identifier associated with time data where a physical change can be viewed through at least one hole.

Accordingly, the Examiner has failed to establish a *prima facie* case for an obviousness rejection. Dependent claims 2, 6-10 and 16 are patentable over the cited references for at least the same reasons.

Furthermore, regarding claim 16, the Examiner has not shown any teaching or suggestion of a device having a "holder [that] substantially fits the envelope and wherein the holder does not move substantially while positioned inside the envelope."

For at least the above stated reasons, Appellant respectfully submits that the final rejection as to claims 1, 2, 6-10 and 16 is in error and should be reversed.

C. Claims 3-5 are Not Unpatentable Under 35 U.S.C. Section 103(a)

Claims 3-5 stand rejected under 35 U.S.C. 103(a) as allegedly being rendered obvious by United States Patent No. 6,542,842 B1 to Robinson, Jr., ("Robinson '846") in view of United States Patent Application Publication 2004/0046009 A1 by Weisenberg, et al. ("Weisenberg '009"), United States Patent Application Publication 2003/0140015 A1 by Applebaum ("Applebaum '015"), and/or United States Patent Application Publication 2003/0085266 by Simon ("Simon '266") and United States Patent No. 5,179,281 to Tawil, et al. ("Tawil '281")and in further view of United States Patent No.

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

4,840,919 to Attar ("Attar '919"). Appellant respectfully disagrees with the rejection and urge its reversal for at least the reasons stated below.

Claim 3 depends indirectly from claim 1 and is patentable for at least the reasons as described above with reference to claim 1. Additionally, they are patentable over the cited reference for the following reasons. Claim 3 recites:

3. The hazardous material detector as claimed in claim 2 wherein the holder and hazardous material test strip mounted thereon are smaller than the envelope and whereby the holder move while positioned inside the envelope. (emphasis added).

The Examiner cites to Attar '919, but does not show a holder in a carrier in which the test strip may move. Furthermore, Attar '919 does not appreciate the problem of placement of a holder in relation to an envelope and holes as claimed. In direct contradiction to the rejection provided, the holder as claimed allows the test strip to be reused, while the device of Robinson, Jr. '846 is embedded. Therefore, the Examiner has impermissibly used the invention as presently claimed and improper hindsight in formulating the rejection. The cited references do not appreciate the problem of reusing the test strip and placing it in a holder to enable viewing it through the hole.

Accordingly, the Examiner has failed to establish a *prima facie* case for an obviousness rejection. For at least these reasons, Appellant respectfully submits that the final rejection as to claim 3 is in error and should be reversed.

Claims 4-5 that depend directly or indirectly from claim 1 and 3 are patentable over the cited references for at least the same reasons. For at least the above stated reasons, Appellant respectfully submits that the final rejection as to claims 3-5 is in error and should be reversed.

D. Claims 11-15 are Not Unpatentable Under 35 U.S.C. Section 103(a)

Claims 11-15 stand rejected under 35 U.S.C. 103(a) as allegedly being rendered obvious by United States Patent No. 6,542,842 B1 to Robinson, Jr., ("Robinson '846") in view of United States Patent Application Publication 2004/0046009 A1 by Weisenberg,

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11/19 Nov. 23, 2005 Appellant's Corrected Brief

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

et al. ("Weisenberg '009"), United States Patent Application Publication 2003/0140015 A1 by Applebaum ("Applebaum '015"), and/or United States Patent Application Publication 2003/0085266 by Simon ("Simon '266") and United States Patent No. 5,179,281 to Tawil, et al. ("Tawil '281") and in further view of the legal precedent *In re Ngai*, 70 USPQ 2d 1862 ("Ngai"). Appellant respectfully disagrees with the rejection and urge its reversal for at least the reasons stated below.

Claim 11 depends directly from claim 1 and is patentable for at least the reasons as described above with reference to claim 1. Additionally, they are patentable over the cited reference for the following reasons. Claim 11 recites:

11. The hazardous material detector as claimed in claim 1 further comprising:
a warning message on the envelope. (emphasis added).

Furthermore, the Applicant respectfully submits that the Examiner has misconstrued the holding of the Ngai decision. The Federal Circuit did not state that all instructions would not add patentable weight to an underlying object. In fact, if the instructions are interrelated so as to produce a new product, the Federal Circuit stated that the new product might indeed be patentable. See In re Ngai, 367 F.3d 1336, 1338, 70 USPQ 2d 1862 (Fed. Cir. 2004).

Here, the invention as claimed in claim 11 recites a warning message on the envelope that is clearly interrelated with the underlying object.

Appellant respectfully submits that the Examiner has improperly applied the holding of Ngai by stating that:

Finally, On 13 May 2004 the Court of Appeals for the Federal Circuit (CAFC) decided, per curiam, the precedential decision *In re Ngai*, 70 USPQ 2d. 1862. Here the CAFC clearly articulated that adding instructions to a known kit is not patentable. Doing so would, as stated by the Court, allow anyone to continue patenting a product indefinitely provided that they add a new instruction sheet to the product.

In the present case, the applicant is simply adding instructions for a user in the form of a warning label. Evidence that this warning label is merely an instruction sheet can be found in the applicant's specification. See §0048 where it is stated:

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

"The hazardous material detection mailpiece 210 can also include a warning label or printed warning, or the like, on the envelope 200. In the embodiment of FIG. 6 the warning states "IMPORTANT CAUTION: HAZARDOUS MATERIAL DETECTION INCLUDED IN ENVELOPEuRED TEST AREA INDICATES CONTAMINATION,"

See also applicant's figures 6 and 8 where it can be seen that the warning label merely instructs the user as to the meaning of the color of the bio-hazardous indicator.

The warning label does not need the envelope/bio-hazardous indicator "kit" in order to function. That is, the warning label instructs without needing to be directly attached to the envelope. Likewise, the envelope/bio-hazardous indicator "kit" does not need the warning label to function as an indicator of the presence of various chemicals and/ or biological agents.

It cannot be patentable to place a warning label on a known apparatus. Doing so would, as similarly stated by the CAFC, allow anyone to continue patenting a product indefinitely provided that they add a new warning label to the product.

Even absent the CAFC's decision, the adding of a warning label or other instructions to a user informing of the significance of the color of the bio-hazardous indicator would have been an obvious modification to Robinson, Jr. Not everyone would automatically know the significance of the indicator's color, and therefore, whether or not the envelope was exposed to such agents as Anthrax. Giving simple instructions, even in the form of a warning label, would help ensure that even the average user would be able to know if they have been or if the envelope was exposed to potentially harmful agents. (February 16, 2005 Final Office Action, pp. 11-12).

Ngai distinguished *In re Gulack*, 703 F.2d 1381 (Fed. Cir. 1983) ("Gulack") by generally stating that separate instructions teaching a new way of using a known device if instructions are known in the art do not add patentable weight. However, if the instructions are interrelated so as to produce a new product, the Federal Circuit stated that the new product might indeed be patentable. Here the instructions are attached to the device and part of the device and therefore must be afforded patentable weight. Not only does the "printed matter" depend on the "kit", it is embodied in a physical form that is attached to the "kit."

As clearly recited in Gulack,

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

The PTO may not disregard claim limitations comprised of printed matter. See *Gulack*, 703 F.2d at 1384 (emphasis added), *cited by In re Lowry*, 32 F.3d 1579, 1582; 32 U.S.P.Q.2D 1031 (CAFC 1994).

Furthermore, the Court stated in *Gulack*:

A "printed matter rejection" under § 103 stands on questionable legal and logical footing. Standing alone, the description of an element of the invention as printed matter tells nothing about the differences between the invention and the prior art or about whether that invention was suggested by the prior art. A printed matter rejection is based on case law antedating the 1952 patent act, employing a point of novelty approach. *In re Sterling*, 21 C.C.P.A. 1134, 70 F.2d 910, 21 U.S.P.Q. (BNA) 519 (1934). The 1952 act legislatively revised that approach through its requirement that the claim be viewed as a whole in determining obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. (BNA) 459, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966). The CCPA has considered all of the limitations of the claims, including the printed matter limitations, in determining whether the invention would have been obvious. See *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. (BNA) 580 (CCPA 1974); *In re Cavrich*, 59 C.C.P.A. 883, 451 F.2d 1091, 172 U.S.P.Q. (BNA) 121 (1971). In *Royka*, 490 F.2d at 985, 180 U.S.P.Q. (BNA) at 583, the CCPA, notably weary of reiterating this point, clearly stated that printed matter may well constitute structural limitations upon which patentability can be predicated. *Gulack*, 703 F.2d at 1385 n.8 (emphasis added), *cited by In re Lowry*, 32 F.3d 1579, 1583; 32 U.S.P.Q.2D 1031 (CAFC 1994).

The court in *Lowry* went on to state:

In *Gulack*, this court concluded that "the critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate." *Id.* at 1386 (footnote omitted), *cited by In re Lowry*, 32 F.3d 1579, 1583; 32 U.S.P.Q.2D 1031 (CAFC 1994).

Here, the claimed element recites a warning attached to the substrate – clearly a functional relationship.

Accordingly, the Examiner has failed to establish a *prima facie* case for an obviousness rejection. For at least these reasons, Appellant respectfully submits that the final rejection as to claim 11 is in error and should be reversed.

Claims 12-15 that depend directly or indirectly from claim 1 and 11 are patentable over the cited references for at least the same reasons.

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

Furthermore, regarding claim 13, the invention as claimed recites a physical label adhered to the envelope that is clearly interrelated with the envelope and not an instruction to use an envelope without the label.

13. The hazardous material detector as claimed in claim 12 wherein:
the warning message comprises a label affixed to the envelope.

Furthermore, regarding claim 15, the invention as claimed recites a physical label adhered to the envelope that is clearly interrelated with the envelope that is placed adjacent to at least one hole and is clearly not an instruction to use an envelope without the label.

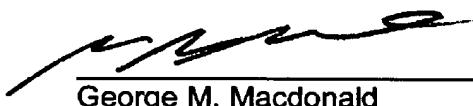
15. The hazardous material detector as claimed in claim 11 wherein:
the warning message is placed adjacent to the at least one hole.

For at least the above stated reasons, Appellant respectfully submits that the final rejection as to claims 11-15 is in error and should be reversed.

IX. Conclusion

In Conclusion, Appellant respectfully submits that the final rejection of claims 1-16 is in error for at least the reasons given above and should, therefore, be reversed.

Respectfully submitted,



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15/19 Nov. 23, 2005 Appellant's Corrected Brief

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

APPENDIX A

1. A hazardous material detector comprising:
an envelope comprising a front side and a back side;
holes formed in at least one of the front side or the back side of the envelope;
a hazardous material test strip for detecting the presence of hazardous material in contact with the test strip;
wherein the test strip includes an identifier associated with time data; and
whereby when hazardous materials are detected by the hazardous material test strip a physical change occurs to the hazardous material test strip and the physical change can be viewed through at least one hole formed in the at least one of the front side or the back side of the envelope.
2. The hazardous material detector as claimed in claim 1 wherein the hazardous material test strip is mounted on a holder.
3. The hazardous material detector as claimed in claim 2 wherein the holder and hazardous material test strip mounted thereon are smaller than the envelope and whereby the holder move while positioned inside the envelope.
4. The hazardous material detector as claimed in claim 1 wherein the hazardous material test strip is mounted on a holder and contained in a carrier.
5. The hazardous material detector as claimed in claim 4 wherein holes are formed in the carrier.
6. The hazardous material detector as claimed in claim 1 wherein the hazardous material test strip is positioned adjacent to the front side of the envelope.
7. The hazardous material detector as claimed in claim 1 wherein the hazardous material test strip is positioned adjacent to the back side of the envelope.

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

8. The hazardous material detector as claimed in claim 1 further comprising: a window on the front side of the envelope.
9. The hazardous material detector as claimed in claim 1 wherein: the physical change comprises a change in color.
10. The hazardous material detector as claimed in claim 9 wherein: the change in color is to red.
11. The hazardous material detector as claimed in claim 1 further comprising: a warning message on the envelope.
12. The hazardous material detector as claimed in claim 11 wherein: the warning message identifies the physical change associated with the presence of a harmful material.
13. The hazardous material detector as claimed in claim 12 wherein: the warning message comprises a label affixed to the envelope.
14. The hazardous material detector as claimed in claim 12 wherein: the warning message comprises a message printed on the envelope using ink.
15. The hazardous material detector as claimed in claim 11 wherein: the warning message is placed adjacent to the at least one hole.
16. The hazardous material detector as claimed in claim 2 wherein: the holder substantially fits the envelope and wherein the holder does not move substantially while positioned inside the envelope.

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

Appendix IX – Evidence Appendix

None

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18/19 Nov. 23, 2005 Appellant's Corrected Brief

Serial No.: 10/065,286
Attorney Docket No.: F-380

Patent

Appendix X – Related Proceedings Appendix

None

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